

Eastern District of California

September 26, 2013 at 10:00 a.m.

- Page 1 of 34 -

the Declaration of Michael Bowen to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

PROCEDURAL ISSUES

Relief Requested and Grounds Stated

Pursuant to Federal Rule of Bankruptcy Procedure 9013 (which is similar to Fed. R. Civ. P. 7(b)) requires that the motion itself state both the grounds upon which the relief is based and the relief with particularity. The present motion states the following grounds and relief requested.

- a. Movant seeks relief from the automatic stay so that it may,
 - i. Complete a construction project,
 - ii. Mitigate damages by avoiding imposition of liquidated damages, and
 - iii. Apply the remaining contract balances to satisfy the Debtor's
 - (1) Payment obligations to subcontractors and suppliers of the project, and
 - (2) Indemnity obligation to Movant.
- b. Movant is entitled to Relief from the Automatic Stay because the Debtor has no equity in the remaining contract balances and the contract balances are not necessary for reorganization in a Chapter 7 liquidation.
- c. Movant is entitled to relief from the automatic stay for cause. Each day of delay results in the contract balances being reduced by the imposition of liquidate damages, and the Debtor lacks the ability to complete the project since it has ceased business operations.
- d. Movant instructs the court to read the motion, points and authorities, declaration, exhibits, and whatever else Movant chooses to present as evidence and arguments at the hearing, and from that, state for Movant the grounds upon which relief may be granted and the specific relief Movant wants to receive.

From reading the Motion, the court has no idea what relief is being granted. There are only general and vague references to "project," "contract," and "balances." The court has no way to determine, from the Motion, what relief is granted, much less determine what grounds are stated with particularity. It is not for the court to canvas other pleadings, and wait until the hearing, to receive additional evidence from a movant to "draft the motion" for Movant.

Docket Control Number

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. This is not correct. The counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Evidence in Support

The moving party filed the Memorandum of Points and Authorities, Michael Bowen's Declaration and various other exhibits (for a total of 166 pages of documents) in this matter as one document. This is not the practice in the Bankruptcy Courts in the Eastern District of California. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

This Rule exists for a very practical reason. The court, operating in a near paperless environment cannot be wading through one electronic document, hundreds of pages in length, consisting of multiple documents. Filing the pleading as Movant does makes it all but unreadable without creating significant otherwise necessary work for the court and staff.

MOTION

Movant argues that Debtor has no equity in the non-specific remaining contract balances and they are not necessary for reorganization in this Chapter 7 liquidation. Movant also argues that it is entitled to relief from the automatic stay for cause because the contract balances are not adequately protected and lifting the stay will allow Movant to mitigate the Debtor's damages.

It appears that Movant is directly the court to wade through a 166 page points and authorities to assemble for it the grounds for relief from the automatic stay. The first six pages of the points and authorities is sprinkled with factual allegations, arguments, numerous citations, and quotations. Next, hidden as an exhibit, is a declaration of a Michael Bowen. This is followed by 125 electronic pages of exhibits, for which no index has been provided to the court or parties in interest.

To the extent that the court would be inclined to provide contract paralegal and associate attorney services to Movant and construct a motion which states the grounds with particularity, the points and authorities are of little assistance. Movant states that there are unidentified payment and performance bonds it has issued in connection with some contract between the Debtor and the City of San Jose. No further description is provided. Under the heading "Fact," reference is made to a project known as Fire Station 36. With respect to this "Fact" the court is instructed to read the exhibit declaration.

MOTHORITIES

To try and rectify the pleading defects, the court anticipates Movant to request the court to treat the points and authorities (part of the 166 page electronic document consisting of a points and authorities, exhibit declaration, and documentary exhibits) as the "motion." To do so, the court would crated a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Bankr. P. 9013), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party.

The court has also observed that the more complex the Mothorities in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party.

In such situations, the court routinely denies the motion without prejudice and without hearing. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

The Motion itself does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that the motion is made pursuant to 11 U.S.C. § 1112(b) and is based on the other pleadings. This is not sufficient to establish the right to convert a case to Chapter 7 or Dismiss.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court

reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b) (1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's Federal Practice, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

DISCUSSION

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d) (2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g) (2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d) (2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

However, Movant has failed to comply with the simple and clear pleading requirements arising under the Federal Rule of Bankruptcy Procedure and the Local Bankruptcy Rules. The court sees no basis for granting Movant an exemption from the Federal Rule of Bankruptcy Procedure. The Motion could have simply and clearly stated the grounds with particularity the grounds and relief requested, rather than sending the court on a 166 page electronic document hunt for what the grounds could be, the contracts, the claims, and the specific relief.

The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion for Relief From the Automatic Stay is denied without prejudice.

2. [13-91315](#)-E-7 APPLEGATE JOHNSTON, INC. AMENDED MOTION FOR RELIEF FROM
LS-1 George C. Hollister AUTOMATIC STAY
9-9-13 [[112](#)]

COLLIER BUILDING
SPECIALTIES, INC. VS.

CONT. FROM 9-5-13

Local Rule 9014-1(f)(2) Motion - Continued Hearing.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, and all creditors on July 28, 2013. The debtor was not served the Motion and supporting pleadings. By the court's calculation, 39 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

The Local Rules require that movant's notice of the hearing disclose whether or not written opposition to the motion is required. See Local Bankr. R. 9014-1(d)(3). The notice provided here did not so specify. This is improper. Failure to comply with the local rules is grounds to deny the motion. See Local Bankr. R. 9014-1(l).

Moreover, the moving party filed the notice of motion, motion for relief from automatic stay, memorandum of points and authorities in support of motion, declaration and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Lastly, the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based.

The court continued the hearing to allow Movant to file and serve supplemental pleadings which state with particularity the grounds upon which relief is sought.

SUPPLEMENTAL PLEADINGS

Movant Collier Building Specialties, Inc. ("Movant") filed supplemental pleadings, moving for relief from the automatic stay to pursue a state court action against the Licence Bond of Debtor Applegate Johnston, Inc. The motion states with particularity sufficient grounds for relief from the automatic stay.

The motion is brought under § 362(d)(1) & (2) that the Movant's License Bond of Debtor is a policy of insurance intended to afford remedies for parties to which the contractor is obligated, the policy has no equity interest in the bond, and that the policy is not necessary for the administration of the estate.

Movant provides the Declaration of Eileen O'Malley, CEO of Collier Building Specialties, Inc., to introduce evidence to authenticate the documents upon which it bases the claim.

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The basis for such relief when there is pending litigation in another forum is predicated on factors of judicial economy including whether the suit involves multiple parties or is ready for trial. See *Packerland Packing Co., Inc. v. Griffith Brokerage Co. (In re S. Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Christensen v.*

Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162 (9th Cir. 1990); *Santa Clara County Fair Ass'n, Inc. v. Sanders (In re Santa Clara County Fair Ass'n, Inc.)*, 180 B.R. 564 (9th Cir. BAP 1995); *Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds sufficient cause for Movant to pursue a statue court action against the License Bond of Debtor.

The court shall issue a minute order modifying the automatic stay as it applies to the Debtors, and each of them, to allow Collier Building Specialties, Inc. to pursue state court action and recover against the License Bond of Debtor.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow the Collier Building Specialties, Inc., its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to pursue state court action against the License Bond of Debtor Applegate Johnston, Inc.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted.

3. [13-91315](#)-E-7 APPLEGATE JOHNSTON, INC. MOTION FOR RELIEF FROM
WW-1 George C. Hollister AUTOMATIC STAY
8-28-13 [[82](#)]
ATASCADERO GLASS, INC. VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 29, 2013. Dckt. 91. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Atascadero Glass, Inc. ("Movant") seeks relief from the automatic stay in order to allow *Atascadero Glass, Inc. v. Applegate Johnson, Inc. Et al.* ("State Court Litigation") to be concluded. The moving party has provided the Declaration of William J. Braun to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The William J. Braun's Declaration states that the Debtor breached a contract and has not made a full payment on work completed by the Movant. Subsequently the Creditor filed a lawsuit in Fresno County Superior Court, Case No. 11CEG03186, and had a two-day bench trial. However, before the Fresno County Superior Court issued an judgment, the Debtor filed Chapter 7 bankruptcy.

Movant argues that the State Court Litigation involves issues related to unpaid amounts owing from Debtor and the construction of an office building in Fresno Irrigation District. Movant states it completed all the work under the subcontract, but Debtor did not pay the full amount owing. Movant states that the State Court Litigation was filed September 12, 2011, and a two day bench trial was held on June 27 and 28, 2013. However, before the judge issued its ruling, the Debtor filed Chapter 7 bankruptcy on July 16, 2013. Movant provides that the judge has put this matter on hold until matters are resolved with the bankruptcy and the automatic stay. The Movant is seeking an order

that will allow the judge in the state court issue his ruling and final judgment.

No parties have filed opposition to the motion to date.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The basis for such relief when there is pending litigation in another forum is predicated on factors of judicial economy including whether the suit involves multiple parties or is ready for trial. See *Packerland Packing Co., Inc. v. Griffith Brokerage Co. (In re S. Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Santa Clara County Fair Ass'n, Inc. v. Sanders (In re Santa Clara County Fair Ass'n, Inc.)*, 180 B.R. 564 (9th Cir. BAP 1995); *Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation case warrants relief from stay for cause. The issues appear to have been already litigated and a two day bench trial has already taken place. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources already put forth in the matter.

The court shall issue a minute order modifying the automatic stay as it applies to the Debtors, and each of them, to allow the Movant to continue the State Court Litigation.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow Atascadero Glass, Inc., its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to continue the *Atascadero Glass, Inc. v. Applegate*

Johnson, Inc. Et al., Fresno County Superior Court Case No. 11CEG03186, to final judgment.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted.

4. **12-92036-E-7** **REYNOL GARCIA AND ENEDINA** **MOTION FOR RELIEF FROM**
 EAT-1 **GARICA** **AUTOMATIC STAY**
 Thomas O. Gillis **8-23-13 [[106](#)]**
NATIONSTAR MORTGAGE VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 23, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Nationstar Mortgage LLC seeks relief from the automatic stay with respect to the real property commonly known as 678 Ranger Street, Oakdale, California. The moving party has provided the Declaration of Gabriel Montoya to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Gabriel Montoya Declaration and the Relief from Stay Summary Sheet states that the Debtor has not made 12 post-petition payments, with a total of

\$27,685.08 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$297,915.59, secured by movant's first trust deed, as stated in the Gabriel Montoya Declaration, while the value of the property is determined to be \$240,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Nationstar Mortgage LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Nationstar Mortgage LLC,

its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 678 Ranger Street, Oakdale, California.

No other or additional relief is granted.

5. [13-90643](#)-E-12 GARY/CHRISTINE TAYLOR MOTION FOR RELIEF FROM
APN-1 Anthony D. Johnston AUTOMATIC STAY
8-14-13 [[94](#)]
BMW BANK OF NORTH AMERICA
VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors', Debtors' Attorney, Chapter 12 Trustee, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

BMW Bank of North America ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 BMW 750Li, VIN ending in 68959. The moving party has provided the Declaration of Deborah Berarducci to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Berarducci Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$1,719.58 in post-petition payments past

due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$22,881.14, as stated in the Berarducci Declaration, while the value of the asset is determined to be \$24,195.00, as stated in Schedules B and D filed by Debtor.

The Berarducci Declaration also states that the records concerning Debtor's account do not verify Debtor's insurance coverage on the property and Movant believes that Debtor is operating the property without having any insurance coverage thereon. Furthermore, the declaration states that the Chapter 12 plan proposed by the Debtor rejects the contractual agreement and intends to surrender possession of the vehicle to Movant.

No party has filed opposition to the motion to date.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments, there does not appear to be insurance coverage, and the Debtor intends to surrender the property under the current proposed Chapter 12 plan. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow BMW Bank of North America, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow BMW Bank of North

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

September 26, 2013 at 10:00 a.m.
- Page 16 of 34 -

The Haddad Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$2,517.14 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$240,923.23, secured by movant's first trust deed, as stated in the Haddad Declaration, while the value of the property is determined to be \$103,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Bank of America, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

No other or additional relief is granted.

September 26, 2013 at 10:00 a.m.
- Page 18 of 34 -

California. FN.1. The subject property is a rental property. The moving party has provided the Declaration of Elizabeth A. Corby to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

FN.1. While the Movant does not state in the Motion how it has proper standing to bring the motion, the Memorandum of Points and Authorities provides that an Assignment of Deed of Trust from Bank of America, N.A. to GreenTree Servicing, LLC was recorded January 16, 2013, and is attached as Exhibit 5.

The Corby Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$3,604.41 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$160,988.90, secured by movant's first trust deed, as stated in the Corby Declaration, while the value of the property is determined to be \$116,395.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Debtor was granted a discharge on August 12, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Greentree Servicing LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has not pleaded adequate facts and has not presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Greentree Servicing LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 224 Eagle Court, Modesto, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

No other or additional relief is granted.

8. [13-91262](#)-E-7 ROBERT ADAMS
ASW-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-22-13 [[31](#)]

FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), Chapter 7 Trustee, and Office of the United States Trustee on August 22, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Motion for Relief from the Automatic Stay without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Federal National Mortgage Association seeks relief from the automatic stay with respect to the real property commonly known as 13519 Skyline Boulevard, Waterford, California. The moving party has provided the Declaration of Kayo Manson-Tompkins to introduce evidence which establishes that the Debtor is no longer the owner of the property, movant having purchased the property at a pre-petition Trustee's Sale on April 22, 2013. Debtors are tenants at sufferance.

However, Movant has not provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Furthermore, Kayo Manson-Tompkins, an associate attorney of The Wolf Firm, does not have personal knowledge of the trustee's sale in order to properly authenticate the document for the court. While authentication of the Trustee's Deed is simple, it must be done, and an attorney is not converted into a competent witness just because a client pays the attorney to do legal work.

Federal Rules of Evidence

The Federal Rules of Evidence are clear and straight forward with respect to what constitutes proper and competent evidence. These Rules include the following.

Federal Rule of Evidence 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. FN.1.

FN.1. WEINSTEIN'S FEDERAL RULES OF EVIDENCE MANUAL 2ND EDITION, MATTHEW BENDER & COMPANY, INC., ARTICLE VI, § 602.02

§ 602.02 Purpose and Applicability of Rule

[1] Personal Knowledge as Most Reliable Evidence

A witness may testify only about matters on which he or she has first-hand knowledge. The witness's testimony must be based on events perceived by the witness through one of the five senses.

The Rule is an extension of the law's usual preference that decisions be based on the best evidence available, although this preference is not an actual rule of evidence. The Rule acknowledges that distortion increases with transfers of testimony, and that the most reliable testimony is obtained from a witness who has actually perceived the event.

Rule 602 permits evidence of the requisite personal knowledge to be provided either through the witness's own testimony or through extrinsic testimony. The Rule authorizes the judge to exercise some, although minimal, control over the jury by empowering the judge to reject inherently incredible testimonial evidence, something that rarely occurs (see § 602.03).

Federal Rule of Evidence 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. FN.2.

FN.2. WEINSTEIN'S FEDERAL RULES OF EVIDENCE MANUAL 2ND EDITION, MATTHEW BENDER & COMPANY, INC., ARTICLE VII, § 701.03, 701.06

§ 701.03 Requirements for Admissibility

[1] Opinion Must Be Based on Personal Perception

To be admissible, lay opinion testimony must be based on the witness's personal perception. This requirement is no more than a restatement of the traditional requirement that most witness testimony be based on first-hand knowledge or observation.

In its purest form, lay opinion testimony is based on the witness's observations of the event or situation in question and amounts to little more than a shorthand rendition of facts that the witness personally perceived. Lay opinion testimony is also admissible when the opinion is a conclusion drawn from a series of personal observations over time. Most courts have also permitted lay witnesses to testify under Rule 701 to their opinions when those opinions are based on a combination of their personal observations of the incident in question and background information they acquired through earlier personal observations....

§ 701.06 Trial Judge Has Broad Discretion to Admit or Exclude Lay Opinion Testimony

Trial courts have broad discretion in determining whether to admit or to exclude lay opinion testimony. This discretion applies both to the general decision to admit or exclude the evidence and to the subsidiary questions included in that determination:

Whether the opinion is based on the witness's personal perception.

Whether the opinion is rationally connected to the witness's personal perceptions.

Whether the opinion will assist the trier of fact in understanding the witness's testimony or in determining a fact in issue. (cont.)

Whether the probative value of the testimony outweighed its potential prejudicial effect.

Federal Rule of Evidence 801. Definitions That Apply to This Article; Exclusions from Hearsay

(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. "Declarant" means the person who made the statement.

(c) Hearsay. "Hearsay" means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Federal Rule of Evidence 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise:

- . a federal statute;
- . these rules; or
- . other rules prescribed by the Supreme Court.

Personal Knowledge Testimony of Counsel

Kayo Manson-Tompkins provides personal knowledge testimony relevant to the present Motion as to the following facts:

Based upon the recorded Trustee's Deed Upon Sale, and my review of all of the documents, records and files in this firm's eviction file in connection with this Debtor, on April 22, 2013, a trustee's foreclosure sale was conducted and Movant was the successful bidder at the sale, thereby acquiring title to the Premises. A Certified copy of the Trustee's Deed Upon Sale transferring title to Movant is attached as Exhibit "1"

Declaration, Dckt. 33.

A witness is one who has personal knowledge (other than an expert witness) of the facts which are to be presented to the court. The court cannot determine what, if any, of what Kayo Manson-Tompkins is testifying to is of personal knowledge and what is made up or hearsay testimony.

CONCLUSION

Therefore, the court does not have sufficient evidence before it in order to determine that the Debtor does not have an interest in the subject real property.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Automatic Stay is denied without prejudice.

9. [13-90079](#)-E-7 ROLLAND/ROBERTA YOUNG
PD-1 Tamie L. Cummins

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-22-13 [[16](#)]

WELLS FARGO BANK, N.A. VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors', Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 22, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Wells Fargo Bank, NA seeks relief from the automatic stay with respect to the real property commonly known as 1526 Scenic Drive, Modesto, California. The moving party has provided the Declaration of Yolanda Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Garcia Declaration states that the Debtor has not made 6 post-petition payments, with a total of \$10,083.00 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$389,783.63 (including \$254,570.93 secured by movant's first trust deed), as stated in the Garcia Declaration, while the value of the property is determined to be \$293,400.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Debtor was granted a discharge on April 22, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Bank, NA, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, NA, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a

nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1526 Scenic Drive, Modesto, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

10. [13-90979-E-7](#) **ROSA/ADAN JUAREZ** **MOTION FOR RELIEF FROM**
CJO-1 **Richard E. Dwyer** **AUTOMATIC STAY**
8-22-13 [[21](#)]

**FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS.**

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors', Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 22, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Federal National Mortgage Association seeks relief from the automatic stay with respect to the real property commonly known as 2000 W. Glenwood Ave., Turlock, California. The moving party has provided the Declaration of Reuben Kim to introduce evidence which establishes that the Debtors are no longer the owners of the property, movant having purchased the property at a pre-petition

Trustee's Sale on October 11, 2012. The Trustee's Deed Upon Sale was recorded on October 23, 2012 in the Official Records of the Stanislaus County Recorder's Office. Debtors are tenants at sufferance, and movant commenced an unlawful detainer action in Stanislaus County Superior Court and received a Writ of Possession on June 10, 2013.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership and a copy of the Writ of Possession. Exhibit 1 and 3, Dckt. 24. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Federal National Mortgage Association, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as [Property Address], California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Federal National Mortgage Association and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2000 W. Glenwood Ave., Turlock, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

11. [13-90979-E-7](#) ROSA/ADAN JUAREZ
EAT-1 Richard E. Dwyer

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-20-13 [[15](#)]

ONEWEST BANK, FSB VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors', Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Onewest Bank, FSB seeks relief from the automatic stay with respect to the real property commonly known as 1018 Parnell Avenue, Turlock, California. The moving party has provided the Declaration of LaShonda Lewis to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Lewis Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$2,639.11 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$350,154.38 secured by movant's first trust deed, as stated in the Lewis Declaration, while the value of the property is determined to be \$175,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the

debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Debtor was granted a discharge on August 27, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Onewest Bank, FSB, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Onewest Bank, FSB, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1018 Parnell Avenue, Turlock, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was

granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. § 362(c) (2) (C).

No other or additional relief is granted.

12. [13-91381](#)-E-7 **STACEY HOFFMANN** **MOTION FOR RELIEF FROM**
JCM-1 **Leticia Tanner** **AUTOMATIC STAY**
 8-19-13 [[11](#)]
LIZABETH CHADWICK VS.

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 19, 2013. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny without prejudice the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Lizabeth Chadwick, individually and as Special Administrator of the Estate of Marlo Chadwick, deceased, Robin Chadwick, Judith Dousseau, Patricia Van Sickle, and Diane Ellen Smith ("Movant") seeks relief from the automatic stay with respect to permit movant to continue prosecuting the pending civil litigation against debtor in the Superior Court of California, Tuolumne County, captioned Lizabeth Chadwick et al. v. Sonora Regional Medical Center, case no. CV57552.

However, Movant has not provided a Declaration to introduce evidence to authenticate the documents or provide any testimony for the relief requested. The court is only presented with the writings and arguments of the attorney for Movant. The court does not have admissible, competent, credible evidence before it to support the contentions of Movant.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief Automatic Stay is denied without prejudice.

13. 12-91889-E-7 GERALD CRAWFORD
APN-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-16-13 [43]

WELLS FARGO BANK, N.A. VS.

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*), Chapter 7 Trustee, and Office of the United States Trustee on August 16, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 7440 Langworth Road, Oakdale, California. The moving party has provided the Declaration of Jamie Rucker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rucker Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$929.32 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$214,750.81 (including \$91,212.81 secured by movant's first trust deed), as stated in the Rucker Declaration, while the value of the property is determined to be \$225,000.00, as stated in Schedules A and D filed by Debtor.

The existence of missed payments by itself does not guarantee relief from stay. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004).

However, while the motion does not provide the information, the court notes that the Chapter 7 Trustee filed his Notice of Assets on September 1, 2012, and has had approximately twelve months to administer the case. The court also notes that after an 8% cost of sale (approximately \$18,000.00), the property will no longer have any equity to protect the creditor. Therefore, sufficient cause exists to grant relief from the automatic stay.

The Debtor was granted a discharge on November 5, 2012. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor.

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has not pleaded adequate facts and has not presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory

note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 7440 Langworth Road, Oakdale, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot, the stay having been terminated as to the Debtor pursuant to 11 U.S.C. § 362(c)(2)(C).

No other or additional relief is granted.